

Message Text

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ACTION SNM-05

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TO SECSTATE WASHDC 1038

UNCLAS SECTION 01 OF 03 BONN 14692

E.O. 11652: N/A
TAGS: SNAR
SUBJ.: NARCOTICS LAWS: FEDERAL REPUBLIC OF GERMANY (FRG)

REF.: STATE 170187

IN REPLY TO QUESTIONS RAISED REFTEL EMBASSY REPORTS THE
FOLLOWING: (1) POSSESSION: A) NO DIFFERENTIATION IS
MADE IN FRG LAW (NARCOTICS ACT) FOR POSSESSION OF
VARIOUS NARCOTICS; I.E. MARIJUANA, COCAINE (INCLUDING
PASTE, LEAVES, ETC.) HEROIN, OR OTHER CONTROLLED
SUBSTANCES (I.E., SYNTHETIC DRUGS, SUCH AS AMPHETAMINES
AND BARBITURATES). B) A SENTENCE IS NOT MANDATORY. THE
COURTS NEED NOT PASS SENTENCE IF THE PERPETRATOR
POSSESSES OR ACQUIRES THE NARCOTICS SOLELY FOR HIS/HER
OWN CONSUMPTION IN SMALL QUANTITIES; I.E. LESS THEN
3 GRAM HEROIN OR 80 GRAM HASHISH. C) PENALTIES FOR
POSSESSION ARE AS SEVERE AS OTHER NARCOTICS OFFENSES;
PUNISHMENT WITH IMPRISONMENT UP TO THREE YEARS AND/OR
A FINE. IN SEVERE CASES, THE SENTENCE IS IMPRISONMENT
FOR ONE TO TEN YEARS. IN ADDITION A FINE MAY BE LEVIED.
A CASE IS CALLED SEVERE IN WHICH THE PERPETRATOR (1)
IMPERILS THE HEALTH OF SEVERAL PERSONS; (2) BRINGS ANY
OTHER PERSON INTO DEADLY PERIL; (3) SHOULD HE BE AN
ADULT, REPEATEDLY DISPENSES OR ADMINISTERS NARCOTICS
TO PERSONS UNDER THE AGE OF 18; (4) ACTS PROFESSIONALLY
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OR AS A MEMBER OF A GANG Banded together for the con-
tinual perpetration of such criminal offenses; (5) IS
IN POSSESSION OF, OR DISPENSES, NARCOTICS IN NOT SMALL
QUANTITIES; (6A) IMPORTS NARCOTICS IN NOT SMALL
QUANTITIES IN ORDER TO PUT THEM INTO CIRCULATION;
(6B) IN IMPORTING NARCOTICS, SECRETES NARCOTICS BY
MEANS OF SPECIALLY INSTALLED DEVICES OR STOWS THEM IN

PLACES DIFFICULT OF ACCESS.

(2) TRAFFICKING: A) ALL CONTROLLED SUBSTANCES ARE SUBJECT TO GENERAL TRAFFICKING OFFENSES. IN ACCORDANCE WITH THE LAW CONCERNING TRADE IN NARCOTIC DRUGS (NARCOTICS ACT) OF JANUARY 10, 1972 THE TERM SUBSTANCES SHALL MEAN: I) RAW OPIUM; OPIUM FOR MEDICAL PURPOSES; COCA LEAF; RAW COCAINE; (II) MORPHINE; DIACETYLMORPHINE (HEROIN) AND OTHER ESTERS OF MORPHINE; DIHYDROCODEINONE (DICODID); DIHYDROMORPHINONE (DILAUDID); DIHYDROOXYCODEINONE (EUCODAL); DIHYDROMORPHINE (PARAMORPHAN); ACETYLDIHYDROCODEINONE (ACETYLDIETHYL-LODIHYDROTHERBAINE, ACEDICON) AND ITS ESTERS; MORPHINE-AMINOXYDE (MORPHINE-N-OXIDE, GENOMORPHINE); THE DERIVATIVES OF THE MORPHINE-AMINOXYDES AND OTHER PENTAVALENT NITROGEN MORPHINE DERIVATIVES; THEBAINE; BENZYL MORPHINE (PERONIN) AND OTHER ESTERS OF MORPHINE UNLESS INCLUDED UNDER 2; COCAINE; ECGONINE AND OTHER ESTERS OF ECGONINE; (III) THE SALTS OF THE SUBSTANCES LISTED UNDER (II); (IV) THE FLOWERING OR FRUITING TOPS OF PLANTS OF THE GENUS CANNABIS L. FROM WHICH THE RESIN HAS NOT BEEN EXTRACTED, EXCLUDING THE SEEDS WHEN NOT ACCOMPANIED BY THE TOPS, AND LEAVES WHICH CONTAIN NO RESIN; (V) CODEINE; ETHYL MORPHINE (DIONIN) AND ITS SALTS. B) MINIMUM PENALTY IS IMPRISONMENT UP TO THREE YEARS AND A FINE OR EITHER OF THESE PUNISHMENTS; MAXIMUM UNCLASSIFIED

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PENALTY CAN BE IMPRISONMENT FOR A TERM OF TEN YEARS AND A FINE. A PERPETRATOR CAN BE PUT ON BAIL UNTIL THE TIME OF TRIAL. C) ELEMENTS OF THE OFFENSE. PUNISHMENT WILL BE INFLICTED UPON WHOMEVER (1) IMPORTS, EXPORTS, WINS, PRODUCES, PROCESSES, TRAFFICS IN, ACQUIRES, DISPENSES, SELLS OR PUTS INTO CIRCULATION OTHERWISE, NARCOTICS, WITHOUT HAVING OBTAINED THE LICENSE REQUIRED BY THE FEDERAL DEPARTMENT OF PUBLIC HEALTH; (2) ALLOWS THE TRANSIT OF NARCOTICS THROUGH GERMAN CUSTOMS TERRITORY EVADING CUSTOMS SUPERVISION; (3) ACQUIRES, DISPENSES OR SELLS NARCOTICS WITHOUT HAVING OBTAINED A PURCHASING PERMIT ISSUED BY THE FEDERAL DEPARTMENT OF PUBLIC HEALTH; (4) POSSESSES NARCOTICS WITHOUT HAVING ACQUIRED THEM ON THE BASIS OF A LICENSE OR A PURCHASING PERMIT; (5) MAKES OR USES UNTRUE OR INCOMPLETE STATEMENTS IN ORDER TO OBTAIN FOR HIMSELF OR FOR SOME OTHER PERSON A) A PURCHASING PERMIT OR B) PRESCRIPTION OF A NARCOTIC; (6A) IMPORTS, EXPORTS, ALLOWS THE TRANSIT OF, WINS, PRODUCES, PROCESSES,

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TRAFFICS IN, ACQUIRES, DISPENSES, SELLS, OR PUTS INTO
CIRCULATION OTHERWISE, OR (6B) POSSESSES NARCOTICS,
(7) ADMINISTERS NARCOTICS, OR MAKES THEM AVAILABLE,
TO SOME OTHER PERSON FOR HIS USE WITHOUT THIS BEING
DONE ALONG WITH SOME MEDICAL OR DENTAL-SURGERY TREAT-
MENT OR FOR SOME SCIENTIFIC PURPOSE, OR OTHER PURPOSE
OF PUBLIC INTEREST, AUTHORIZED BY THE FEDERAL PUBLIC
HEALTH OFFICE; (8) MAKES KNOWN - PUBLICLY OR FOR HIS
OWN ADVANTAGE - ANY OPPORTUNITY FOR INDULGENCE IN, AC-
QUISITION OR DISPENSATION OF, NARCOTICS OR FINDS FOR,
OR OFFERS TO, SOME OTHER PERSON SUCH OPPORTUNITY WITH-
OUT ACQUISITION OR DISPENSATION HAVING BEEN AUTHORIZED
BY THE FEDERAL PUBLIC HEALTH OFFICE OR WITHOUT THE
OPPORTUNITY FOR INDULGENCE FOR SOME SCIENTIFIC PURPOSE,
OR OTHER PURPOSE OF PUBLIC INTEREST, HAVING BEEN
AUTHORIZED BY THE FEDERAL PUBLIC HEALTH OFFICE; (9)
IN HIS CAPACITY AS PHYSICIAN, DENTAL SURGEON OR
VETERINARY SURGEON PRESCRIBES OR DISPENSES A NARCOTIC,
IF ITS APPLICATION IS NOT JUSTIFIED FROM A MEDICAL,
DENTAL-SURGERY, OR VETERINARIAN POINT OF VIEW ...
(10) AT PHARMACIES, DISPENSES NARCOTICS WITHOUT PRESEN-
TATION OF A PRESCRIPTION WRITTEN OUT BY A PHYSICIAN,
DENTAL SURGEON, OR VETERINARIAN ... D) CONSPIRACY TO
TRAFFIC WILL BE PUNISHED WITH A SENTENCE FOR A TERM
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OF BETWEEN ONE AND TEN YEARS.

(3) CULTIVATION: A) THE CULTIVATION OF (I) CANNABIS (MARIJUANA), (II) COCA AND (III) OPIUM POPPY IS PROHIBITED BY LAW. IMPRISONMENT CAN VARY FROM BETWEEN THREE YEARS, AND A FINE, OR BOTH AND, IN PARTICULAR GRAVE CASES, IMPRISONMENT OF BETWEEN ONE AND TEN YEARS. (C) THE ATTEMPT TO EXTRACT NARCOTIC SUBSTANCES FROM CANNABIS, COCA AND OPIUM POPPIES IS PUNISHABLE. WHERE THE PERPETRATOR ACTS THROUGH NEGLIGENCE, THE PUNISHMENT SHALL BE IMPRISONMENT FOR A TERM NOT EXCEEDING ONE YEAR OR A FINE. THE EXTRACTION OF NARCOTIC SUBSTANCES FROM CANNABIS, COCA AND OPIUM POPPIES WILL BE PROSECUTED BY IMPRISONMENT UP TO THREE YEARS, OR A FINE, OR BOTH. IN PARTICULAR GRAVE CASES THE SENTENCE SHALL BE IMPRISONMENT FOR A TERM OF BETWEEN ONE AND 10 YEARS AND A FINE.

(4) FINANCIAL: A) THERE IS NO OFFENSE RELATING TO THE FINANCIAL SUPPORT OF CULTIVATION, EXTRACTION OR TRAF- FICKING IN NARCOTICS. CONCERN FOR THIS ASPECT OF THE DRUG PROBLEM HAS NOT BEEN ADDRESSED. B) THERE ARE NO CURRENCY CONTROL LAWS ON THE EXPORT OF CURRENCY OR FOREIGN BANK ACCOUNTS IN THE FRG.

(5) CRIMINAL PROCEDURE: A) ACCORDING TO LAW THERE IS AN INDEFINITE PERIOD OF INVESTIGATIVE DETENTION. IN CASE NO DEFENSE LAWYER HAS BEEN DESIGNATED AFTER A PERIOD OF 3 MONTHS, THE DISTRICT JUDGE DECIDES WHETHER PRE-TRIAL DETENTION IS STILL APPLICABLE. AFTER A PRE- TRIAL DETENTION OF 6 MONTHS, FROM THE DAY OF THE ARREST, THE DETAINEE WILL BE BROUGHT BEFORE THE APPELLATE COURT WHICH WILL DECIDE WHETHER HE IS TO REMAIN IN CUSTODY. THIS PROCEDURE WILL BE REPEATED
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EVERY 6 MONTHS. CONSULAR ACCESS IS PERMITTED; EMBASSY OR CONSULAR OFFICR HOWEVER, ONLY NOTIFIED AT THE REQUEST OF THE DETAINEE. B) NO EXACT STATEMENT CAN BE MADE TO A CUSTOMARY LENGTH OF PRE-TRIAL DETEN- TION, TRIAL PROCESS, OR USUAL LENGTH OF TRIAL;

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THE LENGTH DEPENDS ON SEVERAL FACTORS, I.E. THE TORTI-
OUS ACT ITSELF, THE PROOFS (MATERIAL EVIDENCES) AND
THE NUMBER OF PERPETRATORS. (A MAJOR PROCEEDING WITH
SEVERAL PERPETRATORS MAY LAST FOR ABOUT 4 WEEKS.) UP
TO 8 DAYS AFTER SENTENCING, THE ACCUSED CAN APPEAL THE
DECISION. THE JUDGMENT IS FINAL AFTER THE 8 DAYS IF
NO APPEAL HAS BEEN FILED. A JUDGMENT CAN ONLY BE OVER-
TURNED ON APPEAL DUE TO TECHNICAL POINTS. PROCEEDINGS
TO APPEAL MAY LAST FOR A RELATIVELY LONG TIME.
D) IN CASE THE DEFENDANT IS IMPECUNIOUS, LEGAL COUNSEL
IS AVAILABLE AT NO COST. E) AN ACCUSED MAY BE RELEASED
ON CONDITIONAL LIBERTY FOR GOOD CONDUCT AFTER HAVING
SERVED 2/3 OF HIS SENTENCE. DURING THE TIME OF PAROLE
HE IS OBLIGED TO FULFILL CERTAIN OBLIGATIONS
(PERMANENT EMPLOYMENT, REPORT PERMANENTLY TO HIS PA-
ROLE OFFICER, ETC.). ONLY SENTENCES FOR A PERIOD OF NOT
MORE THAN 2 YEARS ARE ELIGIBLE FOR PAROLE. F)
FOREIGNERS WHO HAVE VIOLATED THE NARCOTICS LAWS ARE
SENTENCED IN WEST GERMANY. AFTER HAVING SERVED THE
SENTENCE THEY ARE EXPELLED IN CONFORMITY WITH THE FRG
HOST LAW. EXPULSION CAN BE DECLARED FOR A LIMITED TIME
OR IN PERPETUITY. VIOLATIONS OF THE NARCOTICS ACT ARE
NORMALLY FOLLOWED BY PERMANENT EXPULSION.

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